(14)

NO. 02-1060

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

PEOPLE OF THE STATE OF ILLINOIS
Petitioner,

vs.

ROBERT S. LIDSTER
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether *Indianapolis v. Edmond*, 531 U.S. 32 (2000) allows police officers to establish roadblocks for the ordinary enterprise of investigating crime in the absence of exigent circumstances or individualized suspicion.

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STATEMENT OF THE CASE

For the most part, the Petitioner's Statement of the Case accurately and completely portrays the facts in this case.

REASON FOR DENYING THE WRIT

***Certiorari* should not be granted because the State's Petition presents no issue not previously resolved by this Court.**

This Court's "checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion." *Indianapolis v. Edmond*, 531 U.S. 32, 41 (2000). This Court in *Edmond* declined to suspend the usual requirement of individualized suspicion where the police sought to employ a checkpoint primarily for the ordinary enterprise of investigating crime. *Indianapolis v. Edmond,* 531 U.S. at 44. In its Petition, the State of Illinois seeks simply to utilize suspicionless seizures for the ordinary enterprise of investigating crime. As the petition herein seeks to expand this Court's clearly drawn limitations in a fashion rejected by the Court in *Edmond*, there is no reason to grant *certiorari*.

"It is impossible to escape the conclusion that the roadblock's ostensible purpose was to seek evidence of 'ordinary criminal wrongdoing.'" *People v. Lidster*, 319 Ill.App.3d 825, 828 (2nd Dist. 2001). The State terms the roadblock in the instant case an "informational" roadblock, as the police were handing out flyers to stopped motorists, but it is clear that, more than simply seeking to *impart* information to the public, the police sought to *obtain* information from the public. Had the police intended to provide information, they certainly had available to them the use of publication by radio, television or newspapers, or the posting of flyers at the businesses from which the police thought potential witnesses might be driving when they instituted the roadblock. Moreover, at the roadblock, a second officer was stationed so as to prevent drivers from evading the roadblock, thus discrediting the State's contention that the "checkpoint's primary (and, in fact only) purpose was to seek information about an existing crime, not to attempt to make new defendants of those stopped at the

checkpoint." (Petitioner's Petition, p. 6). *See People v. Lidster*, 319 Ill.App.3d 825, 827 (2nd Dist. 2001). That the roadblock served as a seizure for the purpose of investigating crime, therefore, cannot be questioned. *People v. Lidster*, 319 Ill.App.3d at 828; *See also, Michigan Department of State Police v. Sitz*, 496 U.S. 444, 450, (1990); *United States v. Martinez-Fuerte*, 428 U.S. 543, 556, (1976); (Petitioner's Petition, p.4). Thus, the question is whether the seizure was unreasonable.

A seizure conducted in the absence of individualized suspicion is presumed unreasonable. *Chandler v. Miller*, 520 U.S. 305, 308 (1997). Thus, this Court has upheld suspicionless seizures only where the program was designed to serve special needs, beyond the normal needs for law enforcement. *Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000). Never, however, has this Court upheld a checkpoint program the purpose of which was to detect evidence of criminal wrongdoing. *Edmond*, 531 U.S. at 37-38.

Where checkpoints have passed constitutional muster in the absence of individualized suspicion, there has always been a significant public interest. In *United States v. Martinez-Fuerte*, the Court found that, despite a long-standing national policy to limit immigration into the United States, as many as 12 million illegal immigrants may be in the country, 85 percent of whom come from Mexico, which shares a border with the U.S. that is nearly 2,000 miles long. *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-552 (1976). Patrolling this border was found to present formidable law enforcement problems, and the Court upheld the use of checkpoints because of the "great" need. *United States v. Martinez-Fuerte*, 428 U.S. at 557.

Similarly, this Court upheld a highway sobriety checkpoint because of its need to combat a serious public danger, finding that "drunk drivers cause an annual death toll of over 25,000 and in the same time span cause nearly one million personal injuries and more than five billion dollars in

property damage." *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 451 (1990). Moreover, the danger presented in Sitz was considered an "immediate hazard." *Edmond*, 531 U.S. at 39. Thus the gravity of the drunk driving problem and "the magnitude of the State's interest in getting drunk drivers off the road weighed heavily in the Court's determination that the program was constitutional. *Id.*

Thus, a seizure is unreasonable, and therefore unconstitutional, if it is the result of a suspicionless stop unless it is part of a program created to combat an immediate hazard (as in *Sitz*), or because of a great need (as in *Martinez-Fuerte*). Conversely, suspicionless stops have been invalidated where the purpose of the stop was to investigate crime. *See Delaware v. Prouse*, 440 U.S. 648 (1979). Thus, the Court stated in *Edmond*: "Not only does the common thread of highway safety run through *Sitz* and *Prouse*, but *Prouse* itself reveals a difference in the Fourth Amendment significance of highway safety interests and the general interest in crime control." *Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000).

Thus, *Edmond*, like *Sitz*, requires that the State demonstrate the need for a checkpoint to respond to an immediate threat in order to consider such a suspicionless stop constitutional. No such threat existed in the instant case. Indeed, it is uncontroverted that the purpose of the checkpoint was not to deter or to police crime, but to investigate a crime that had occurred one week prior to the seizure of defendant.

The State attempts to distinguish *Edmond* by arguing that the purpose of the checkpoint was not to seek evidence of Defendant's criminal conduct, but was to seek evidence of other criminal conduct. (Petitioner's Petition p.6). Moreover, the State argues that since the checkpoints cited in *Edmond* (including *Prouse*, in which this Court invalidated the checkpoint) were used to interdict

ongoing unknown crimes, there exists no prohibition against suspicionless searches where no immediate threat exists.

The Illinois Supreme Court properly rejected the State's implied definition of "crime control." The State asserts "a distinction between gathering information leading to the arrest and prosecution of a motorist as the perpetrator of a crime, and gathering information from a motorist leading to the identification of *another* motorist as the perpetrator of a crime." *People v. Lidster*, 202 Ill.2d 1, 8-9, 779 N.E.2d 855 (2002). In the State's view, in the above example, the former represents crime control, but the latter does not. The State's definition of "crime control" thus includes only the arrest of a perpetrator, and does not involve any investigation or information gathering that leads to the arrest. Because police efforts are directed at general crime control, whether by way of investigating or solving any crime, the Illinois Supreme Court properly applied this Court's refusal to "suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crime." *Lidster*, 202 Ill.2d at 6, *quoting with approval, Edmond*, 531 U.S. at 44.

The Illinois Supreme Court also properly considered the concerns expressed by this court in *Edmond*, that allowing the police to utilize investigative roadblocks for a minimum period of seven days following an offense would make roadblocks "a routine part of American life," a scenario this Court sought to avoid in *Edmond*. *Edmond*, 531 U.S. at 42. The Illinois Supreme Court properly considered this concern, noting that in the year 2001 the police recorded 627 murders, 26,660 assaults, 19,449 robberies, 28,401 burglaries, 105,728 thefts, 35,570 motor vehicle thefts and 1,106 arsons in the city of Chicago alone. *Lidster*, 202 Ill.2d at 10. Allowing informational roadblocks seeking potential witnesses for each of the above offenses for at least one week following each

offense raises the troubling specter that Chicago "would be adorned with roadblocks." *Id.*

Neither *Lidster* nor *Edmond* prevent the State from utilizing roadblocks in the event of an emergency. Indeed, the Court in *Edmond* specifically set forth, as examples of permissible roadblocks, attempts to thwart an imminent terrorist attack, or an effort to catch a dangerous criminal who is likely to flee by way of a particular route. *Indianapolis v. Edmond*, 531 U.S. at 44. It is the latter example which distinguishes this case from *Burns v. Commonwealth*, 541 S.E.2d 872 (2001), cited by the State and *Amicus* to demonstrate a split among the states. In *Burns*, the police established a roadblock at a murder scene less than seven hours after the brutal rape and murder of a seventy-three-year-old woman was discovered. The court in *Burns* considered that matter an exception to the rule espoused in *Edmond* because of the exigent nature of the matter. *Burns*, 541 S.E.2d at 884. Conversely, there was no indication in the instant case that the motorist remained in the vicinity or posed any further danger to local residents. *Lidster*, 202 Ill.2d at 11. Thus, *Burns* is distinguishable from this case.[1] Further, *Burns* demonstrates the ready applicability of *Edmond* to allow the use of roadblocks in an emergency, while preventing their use for general crime control.

The final prong in the balancing test used to evaluate checkpoints questions the extent to which the checkpoint could reasonably be said to advance the State's interest. *Sitz*, 496 U.S. at 455; *Brown v. Texas*, 443 U.S. 47, 50-51, 99 S.Ct. 2637 (1979). Both the State and the *Amicus Curiae* assert that checkpoints such as the one used in the instant case are effective law enforcement techniques, but neither cites any empirical data to support the claim. Indeed, the checkpoint here

[1] *Burns* is further distinguishable as there was a question as to whether the defendant was stopped or had approached the police voluntarily. 541 S.E.2d at 315. The Virginia Court also noted that Burns's statements would be admissible even were the stop invalidated as the connection between the stop and the evidence was dissipated by subsequent acts. *Burns*, 541 S.E.2d at 884 n.11.

failed to achieve its goal.

In summary, the checkpoint in this case is unconstitutional as it was an unreasonable seizure. An investigative stop can be upheld only where individualized suspicion exists or a significant public interest faces an immediate and great threat. Otherwise, the police would be able to routinely stop citizens without just cause, thereby violating another public interest, that being the security guaranteed by the Fourth Amendment. In *Edmond*, this Court drew "the line at roadblocks designed primarily to serve the general interest in crime control." *Edmond* at 42. There is even some concern as to whether the Constitution permits *any* suspicionless roadblock seizures. *See, Edmond*, 531 U.S. at 56. ("I rather doubt that the Framers of the Fourth Amendment would have considered "reasonable" a program of indiscriminate stops of individuals not suspected of wrongdoing.") (Thomas, J., Dissenting). Thus, the Illinois Supreme Court in *Lidster* properly adhered to the clear limitations drawn by this Court. Because *Lidster* and *Edmond* follow a long line of this court's cases which allows only a limited exception for exigencies or matters of great national need, this issue need not be revisited, and the Petition for Writ of *Certiorari* should be denied.

CONCLUSION

For the aforementioned reasons, Respondent, Robert S. Lidster, respectfully requests that this Honorable Court deny the State's Petition for Writ of *Certiorari*.

Respectfully Submitted,

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